

Cooper-Jarrett, Inc. and International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 261.
Cases 6-CA-13569 and 6-CA-14024

March 22, 1982

DECISION AND ORDER

BY CHAIRMAN VAN DE WATER AND
MEMBERS FANNING AND HUNTER

On September 29, 1981, Administrative Law Judge J. Lee Benice issued the attached Decision in this proceeding. Thereafter, Respondent and the General Counsel filed exceptions and supporting briefs, and Respondent filed a brief in response to the General Counsel's exceptions.

Pursuant to the provisions of Section 3(b) of the National Labor Relations Act, as amended, the National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the record and the attached Decision in light of the exceptions and briefs and has decided to affirm the rulings, findings,¹ and conclusions of the Administrative Law Judge only to the extent consistent herewith.

The Administrative Law Judge found, and we agree, that Respondent violated Section 8(a)(1) of the Act by threatening to retaliate against an employee for filing a grievance. The complaint also alleged, however, that Respondent violated Section 8(a)(1) of the Act by Respondent's chairman of the board, Bush Abadere, threatening union steward Donald McDonald with discharge because of his support for the Union and because he held a union office; disparaging and verbally abusing McDonald because he processed employee grievances; and soliciting other employees to remove McDonald from union office. The Administrative Law Judge dismissed these allegations, reasoning that McDonald was not threatened with discharge since Abadere was venting his frustration over his "inability" to fire McDonald; that, while Abadere's remarks were abusive and disparaging, they were not made because of McDonald's union activity; and that Abadere's comments to other employees were so utterly lacking in reasoning and made while "so obviously out of control" that it is doubtful that any employee took him seriously and that there is no evidence that any employee did. The Administrative Law Judge concluded that Abadere's re-

marks did not violate Section 8(a)(1) of the Act since they did "not realistically impinge upon any employee's exercise of his or her Section 7 rights." The General Counsel excepts to the above findings, and we find merit in certain of the exceptions.

Abadere had devised a plan under which employees voluntarily contributed 7 percent of their gross pay as a loan to the Company to assist it through serious financial difficulties. Although Abadere had apparently tried to persuade McDonald to contribute, McDonald along with some other employees did not participate in the plan. McDonald's decision not to contribute was well known among other employees as McDonald was an extremely influential steward.

On the morning of June 12, 1980, Abadere told McDonald that "I wish you didn't work for this company," that McDonald was "bad for the morale of the men," and was a "son of a bitch." McDonald asked, "Why don't you fire me?" Abadere said that he wished he could, and that McDonald was "a fucking prick." Shortly thereafter, Abadere approached employee James DeJulia. He said that McDonald was a "son of a bitch" and that the men should get a new leader. He then approached employee Jack Trout and said that McDonald was no good and that they needed a new leader. Finally, later that day in a conversation with employee William Smith, Abadere said to Smith: "Get rid of that fucking McDonald. He's no good for the Company. He's breaking me. Vote him out." Smith asked what was wrong with McDonald. Abadere responded, "He's a no good bastard."

We have long held that Section 8(a)(1) of the Act is violated when an employer engages in conduct which may reasonably be said tends to interfere with the exercise of employee rights under the Act.² The employer's motive for the proscribed conduct and employees' subjective reactions to it are irrelevant.

We find, contrary to the Administrative Law Judge, that Abadere's remarks to employees DeJulia, Trout, and Smith that McDonald was a "son of a bitch," that they should replace him as their union steward, that he was no good for the Company, that he was "breaking" Abadere, and that the employees should vote him out of union office constituted interference with employee rights under the Act and, therefore, were violative of Section 8(a)(1) as alleged.³ Indeed, Abadere could hardly

¹ Respondent has excepted to certain credibility findings made by the Administrative Law Judge. It is the Board's established policy not to overrule an administrative law judge's resolutions with respect to credibility unless the clear preponderance of all of the relevant evidence convinces us that the resolutions are incorrect. *Standard Dry Wall Products, Inc.*, 91 NLRB 544 (1950), *enfd.* 188 F.2d 362 (3d Cir. 1951). We have carefully examined the record and find no basis for reversing his findings.

² *Seneca Foods Corporation*, 244 NLRB 558, 563 (1979); *El Rancho Market*, 235 NLRB 468 (1978); *Hanes Hosiery, Inc.*, 219 NLRB 338 (1975).

³ *General Stencils, Inc.*, 195 NLRB 1109 (1972).

have been more explicit in calling upon employees to oust McDonald as their union steward, a request which plainly interferes with rights protected by the Act.⁴

Abadere's remarks to McDonald are also violative of Section 8(a)(1) of the Act. McDonald's union activity was never explicitly mentioned by Abadere in his conversation with McDonald. Considering this conversation alone without more evidence, it is difficult to discern why Abadere lashed out against McDonald in the manner that he did. It is conceivable that the sole basis of Abadere's outburst was his frustration with his difficulty in winning over employees to join his 7-percent reinvestment program. However, the meaning of Abadere's remarks becomes clearer given his subsequent conversations with other employees in which he prodded and virtually ordered unit employees to remove McDonald from union office. Thus, it becomes clear that, in his remarks to McDonald, Abadere singled out McDonald for criticism because of his position as an influential union steward who did not support Respondent's reinvestment program. Abadere's failure to refer specifically to McDonald's union activity does not preclude us from finding a violation here as such a finding "would merely reward a wrongdoer for his circumsppection."⁵ Moreover, while Abadere never explicitly threatened to discharge McDonald during the conversation, he did say that he wished McDonald did not work for Respondent and that he wished he could fire McDonald. Such remarks in light of Abadere's later statements to employees, which we infer were later related to McDonald, tend to interfere with McDonald's Section 7 right to hold union office.⁶ We find that such veiled threats constituted an implied threat of discharge violative of Section 8(a)(1) of the Act.⁷

We do not find, however, that Abadere's comments to McDonald disparaged and verbally abused McDonald because he presented grievances pursuant to the collective-bargaining agreement. We agree with the Administrative Law Judge that there is no evidence to link Abadere's comments with McDonald's grievance-processing function. Accordingly, we agree with the Administrative Law Judge and shall dismiss this complaint allegation.⁸

⁴ *Martin K. Eby Construction Co., Inc.*, 250 NLRB 1348 (1980); cf. *Kansas City Power & Light Company*, 231 NLRB 204 (1977).

⁵ *El Rancho Market*, 235 NLRB 471, fn. 11 (1978).

⁶ *General Stencils, Inc.*, 195 NLRB 1109 (1972).

⁷ *Wometco Coca-Cola Bottling Company of Nashville, Inc.*, 255 NLRB 431, 443, (1981), *Rolligon Corporation*, 254 NLRB 2 (1981); *Bell Burglar Alarms, Inc.*, 245 NLRB 990 (1979).

⁸ Cf. *Graves Trucking, Inc.*, 246 NLRB 344 (1979).

ORDER

Pursuant to Section 10(c) of the National Labor Relations Act, as amended, the National Labor Relations Board hereby orders that the Respondent, Cooper-Jarrett, Inc., West Middlesex, Pennsylvania, its officers, agents, successors, and assigns, shall:

1. Cease and desist from:

(a) Threatening employees with discharge because of their union support and because they hold union office.

(b) Soliciting employees to remove a union steward from office.

(c) Making threats of retaliation against employees who file grievances against Respondent pursuant to a collective-bargaining agreement.

(d) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.

2. Take the following affirmative action which the Board finds will effectuate the policies of the Act:

(a) Post at its West Middlesex, Pennsylvania, terminal copies of the attached notice marked "Appendix."⁹ Copies of said notice, on forms provided by the Regional Director for Region 6, after being duly signed by Respondent's representatives, shall be posted by it immediately upon receipt thereof, and be maintained by it for 60 consecutive days thereafter, in conspicuous places, including all places where notices to employees are customarily posted. Reasonable steps shall be taken by Respondent to insure that copies of said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director for Region 6, in writing, within 20 days from the date of this Order, what steps Respondent has taken to comply herewith.

IT IS FURTHER ORDERED that any other allegation of the complaint which charges Respondent with an unfair labor practice other than those found herein be, and the same hereby is, dismissed.

⁹ In the event that this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

After a hearing at which all sides had an opportunity to present evidence and state their positions, the National Labor Relations Board found that we have violated the National Labor Relations Act, as amended, and has ordered us to post this notice.

The Act gives employees the following rights:

- To engage in self-organization
- To form, join, or assist any union
- To bargain collectively through representatives of their own choice
- To engage in activities together for the purpose of collective bargaining or other mutual aid or protection
- To refrain from the exercise of any or all such activities.

WE WILL NOT threaten our employees with discharge because of their union support and because they hold union office.

WE WILL NOT solicit employees to remove a union steward from office.

WE WILL NOT threaten retaliation against employees who file grievances against us pursuant to our collective-bargaining agreement.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of the rights guaranteed them under Section 7 of the Act.

COOPER-JARRETT, INC.

DECISION

STATEMENT OF THE CASE

J. LEE BENICE, Administrative Law Judge: The charges in these cases were filed on June 24 (Case 6-CA-13569) and November 10, 1980 (Case 6-CA-14024), by the International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 261. The complaint in Case 6-CA-13569, issued August 12, 1980, alleges that Respondent, through its chairman of the board, Bush Abadere, violated Section 8(a)(1) of the Act by (1) threatening an employee with discharge because of his support for the Union and because he held a union office; (2) soliciting employees to remove a union steward from office; and (3) disparaging and verbally abusing an employee because he processed employee grievances. The complaint in Case 6-CA-14024, issued December 10, 1980, alleges that Respondent, through a supervisor, Gene Boso, violated Section 8(a)(1) by threatening an employee with reprisals

if he presented and processed a grievance. Respondent denies the commission of any unfair labor practices.

A hearing was held before me at West Middlesex, Pennsylvania, on March 5, 1981. Post-hearing briefs have been filed by the General Counsel and the Respondent.

Upon the entire record in this case, including my observation of the witnesses and their demeanor, I make the following:

FINDINGS AND CONCLUSIONS

I. THE BUSINESS OF RESPONDENT

Respondent is engaged in the transportation of freight in interstate commerce. During a representative 1-year period it derived gross revenues of more than \$50,000 from such operations. I find that Respondent is an employer engaged in commerce within the meaning of the Act and that it will effectuate the policies of the Act to assert jurisdiction herein.

II. THE LABOR ORGANIZATION INVOLVED

International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 261, herein called the Union, is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED VIOLATIONS IN CASE 6-CA-13569

A. *The Facts*

Respondent had been having serious financial difficulties, and in order to assist it through this difficult period, its chairman of the board, Bush Abadere, devised a plan modeled after one used by Eastern Airlines, under which employees who voluntarily joined the plan contributed a percentage of their gross pay as a loan to the Company in the hope that this would help the Company through its difficulties and would eventually even return a profit to the employee on his investment. Some chose to join the plan, and some did not. Conspicuous among those who did not was Donald McDonald, union steward for the 75-person dock workers' unit at the West Middlesex, Pennsylvania, terminal. McDonald had earlier been introduced to Abadere (by the terminal manager at the time) as the most influential steward he had ever met, and his decision not to contribute was well known to the other employees, for whatever effect his example might have had. Abadere believed that McDonald was very influential with the other men, and that many of the others would have joined in if McDonald had. But he had been unable to persuade McDonald. Respondent claims, but offered no evidence to prove, that Abadere had been under a great deal of pressure trying to turn around this failing Company.

Abadere was notorious for his use of very coarse language. He used it for emphasis whether he was angry, joking, or merely making a point.

On the morning of June 12, 1980, at Respondent's West Middlesex, Pennsylvania, terminal, Abadere was standing behind McDonald as the latter was backing a highlift out of a trailer. McDonald said, "Good morning," to which Abadere responded, "I wish you didn't

work for this company." McDonald answered, "Is that right?" And Abadere added, "You're bad for the morale of the men. You are a son of a bitch." McDonald then taunted, "Why don't you fire me?" to which Abadere responded, "I wish I could. You're a fucking prick." McDonald then said, "You can do anything you want to do" and drove off.

Abadere then approached another dockman, James DeJulia, declared that McDonald was a "son of a bitch," and added that the men should get a new leader. Later he approached dockman Jack Trout and said that McDonald was no good and that they needed a new leader.

Much later in the day, dockman William Smith approached Abadere to ask him how the Company was doing. Smith was concerned because he was contributing 7 percent of his salary to the Company, under the aforementioned plan, and was unsure of his investment. In the course of their conversation about the plan, Abadere abruptly said "Get rid of that fucking McDonald. He's no good for the Company. He's breaking me. Vote him out." Smith asked him what his trouble was with McDonald, and Abadere replied, "He's a no good bastard." Then they were interrupted, and the conversation was never resumed.

There is no evidence that Abadere ever pursued this campaign against McDonald any further, and, in the months that followed, he made further efforts to persuade McDonald to support the plan. These efforts were unsuccessful.

B. Concluding Findings

The General Counsel takes the position that the abusive language and the attempts to unseat McDonald as union steward were directed at him because of his effectiveness in processing employee grievances, a skill which allegedly was becoming costly to the Company; and that Abadere threatened McDonald with the loss of his job as dockman. These acts, according to the General Counsel, constituted violations of Section 8(a)(1) of the Act. However, it was apparent at all times that McDonald's continued employment was not in any way jeopardized by Abadere's remarks, which were not threats but merely reflected Abadere's frustration.¹ And there is no evidence whatsoever to show how effectively handled or how costly to the Company the grievances were which McDonald handled. On the other hand, it is easy to understand Abadere's resentment and frustration over McDonald's unwillingness to lead other employees to support the financial plan which Abadere felt was important in the struggle to turn the company around financially.

The General Counsel contends that Abadere's remarks were abusive and disparaging and that this abuse was directed against the employee because of his protected activity as a union steward. I find, however, that although Abadere's remarks were unquestionably abusive and disparaging, the connection with union activity is nowhere

established and cannot fairly be inferred from Abadere's words or from the circumstances.

The General Counsel contends that Abadere violated Section 8(a)(1) by unlawfully soliciting employees to remove McDonald as steward. However, I find it almost impossible to take Abadere's efforts seriously. His short-lived buttonholing campaign was begun and ended 9 months before the next election. The campaign itself consisted entirely of outbursts in front of three dockmen, all on the same day. In trying to persuade the first employee, James DeJulia, to get rid of (what Abadere, at least perceived as) a popular and influential leader, his only argument was that McDonald was a "son of a bitch." To convince Jack Trout, Abadere's entire case consisted of saying that McDonald was "no good." In answer to Smith's inquiry as to specifically what the trouble was with McDonald, Abadere's analysis was that "He is a no-good bastard." Such reasoning presented under such circumstances could never convince any employee to vote a popular and effective leader out of office.

Abadere was so obviously out of control and ineffective that it is very doubtful that anyone could have taken him seriously. There certainly is no evidence that anyone did. His uncontrolled anger was probably rooted in frustration which grew from McDonald's refusal to help the Company in its financial hour of need. And, presumably, Abadere dropped the entire campaign when he regained his composure. In any event, it all ended on the day it began.

Far from intimidating anyone, Abadere seems only to have succeeded in making a fool of himself with his absurdly ineffective rantings. Such activity is not prohibited by Section 8(a)(1) since it does not realistically impinge upon any employee's exercise of his or her Section 7 rights.

IV. THE ALLEGED VIOLATIONS IN CASE 6-CA-14024

A. The Facts

On October 7, 1980, McDonald was asked by Paul Hortert, one of the dockmen, to file a grievance because a junior man had been called in to work in place of Hortert on September 27. McDonald filed the grievance and afterward spoke to Gene Boso, the terminal manager at West Middlesex, who admitted that the "call-around" had been his mistake but who said, in effect, that he did not want to have to pay for it and would try to talk Hortert out of it, that Hortert was nitpicking. Boso stated that Hortert had been late for work several times and had not been nailed for everything, but that if Hortert was going to insist upon payment, Boso was going to start to nail Hortert for everything. Boso denies making the threatening statement, but I credit McDonald.²

¹ The General Counsel argues that some of Abadere's remarks to McDonald amounted to an invitation to quit, carrying with it an implied threat of discharge. I find such a conclusion to be unsupportable. The remarks were an obvious expression of regret over Abadere's inability to get rid of McDonald.

² McDonald's version has a ring of truth to it, and McDonald had little incentive for fabricating these remarks, while Boso stands accused, in effect, and has been trying to escape his share of responsibility for the "call-around" incident from the beginning. I do not agree with Respondent that McDonald's characterization of G. C. Exh. 3 as *mostly* having to do with offensive language, rather than insubordination, is even inaccurate.

Continued

Boso then tried to get Hortert to drop the grievance, and Hortert seemed nearly persuaded, but said he wanted to talk to McDonald about it before doing anything. Boso got the impression that the grievance would be dropped, but Hortert apparently never talked to McDonald nor did anything else about the grievance. So, when the matter came up for resolution at a hearing at the local level, Hortert had to be paid for 8 hours of lost time. Afterward, Boso never retaliated as he had threatened to do.

B. Concluding Findings

It is clear that Boso's threat to "nail" Hortert for "every little thing" in retaliation for Hortert's pursuing of a legitimate and serious grievance was an interference with the free exercise of the employee's rights to file a grievance, and that Boso's action thus violated Section 8(a)(1). The fact that the threat was delivered only through the union steward and not directly to the employee filing the grievance does not excuse it or relieve it of its tendency to inhibit the legitimate pursuit of this matter by Hortert or its tendency to inhibit the filing of other grievances in the future by Hortert or other employees, since it was likely that word of the threat would

rate, let alone that it discredits his recollection of the events in question here. That document (a disciplinary letter addressed to him) appears to have been drafted almost without regard to what Respondent now alleges was its main purpose; i.e., to warn against further acts of insubordination.

be passed on to Hortert and the other employees sooner or later.

V. THE REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall recommend that Respondent be ordered to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act.

Upon the basis of the above findings of fact and the entire record in this case, I make the following:

CONCLUSIONS OF LAW

1. Respondent is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

2. International Brotherhood of Teamsters, Chauffeurs, Warehousemen and Helpers of America, Local Union No. 261, is a labor organization within the meaning of Section 2(5) of the Act.

3. By threatening retaliation against an employee who was processing a grievance against it pursuant to a collective-bargaining agreement, Respondent has engaged in unfair labor practices affecting commerce within the meaning of Sections 8(a)(1) and 2(6) and (7) of the Act.

4. Respondent has not been shown to have violated the Act in the remarks by its chairman to union steward Donald McDonald or in the chairman's remarks to other employees concerning McDonald.

[Recommended Order omitted from publication.]